

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

DANIEL T. MORENO, an individual,

Plaintiff,

v.

NOVASTAR HOME MORTGAGE, INC.,  
QUALITY LOAN SERVICES, CAL-  
WESTERN RECONVEYANCE  
CORPORATION, MERS, and WACHOVIA  
MORTGAGE,

Defendants.

Case No.: 5:11-CV-04780-LHK

ORDER TO SHOW CAUSE WHY CASE  
SHOULD NOT BE DISMISSED FOR  
FAILURE TO PROSECUTE

Plaintiff Daniel Moreno filed a complaint in state court on August 26, 2011, which Defendant Wachovia Mortgage then removed to federal court on September 26, 2011. *See* ECF No. 1. October 3, 2011, Wachovia Mortgage filed a Motion to Dismiss all four claims alleged in the complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be granted. *See* ECF No. 6. Pursuant to Civil Local Rule 7-3(a), Plaintiffs' opposition to the motion to dismiss was due on October 17, 2011. Plaintiffs have not filed an opposition or statement of nonopposition to Defendant's motion to dismiss. Moreover, based on the docket, it is not clear that Defendants Novastar Home Mortgage, Inc., Quality Loan Services, Cal-Western Reconveyance Corp., MERS, and Wachovia Mortgage have been served in this case.

1 The hearing on the motion to dismiss and the case management conference set for January  
2 26, 2012 are VACATED. The Court hereby ORDERS Plaintiff to show cause why this case  
3 should not be dismissed for failure to prosecute. This Order does not authorize Plaintiff to file an  
4 untimely opposition to Defendant's motion to dismiss. Plaintiff has until January 19, 2012 to file a  
5 response to this Order to Show Cause. A hearing on this Order to Show Cause is set for  
6 **Thursday, January 26, 2012 at 1:30 P.M.** In addition, by the hearing on the Order to Show  
7 Cause, Plaintiff must file proofs of service of the summons and complaint as to all Defendants in  
8 compliance with Federal Rule of Civil Procedure 4(m). Plaintiff's failure to respond to this Order  
9 and to appear at the January 26, 2012 hearing will result in dismissal with prejudice for failure to  
10 prosecute.

11 In the event that Plaintiff timely files a response to this Order, Defendant Wachovia  
12 Mortgage is on notice that the Court may at that time request supplemental briefing from both  
13 parties as to whether the remaining Defendants were fraudulently joined in the state court action as  
14 Wachovia Mortgage has alleged in its notice of removal. *See* ECF No. 1.

15 **IT IS SO ORDERED.**

16 Dated: January 11, 2012

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LUCY H. KOH  
United States District Judge